

## MSC Opinion: Notice of intent mailed to defendant's prior address during limitations period effectively tolled that limitations period

26. May 2010 By Jason Byrne

On May 25, 2009, the Michigan Supreme Court published its decision in *DeCosta v. Gossage*, No. 137480. In a plurality opinion authored by Justice Weaver and joined by Justice Hathaway (with Justices Kelly and Cavanagh concurring in the result), the Court found that the notice of intent to sue on a medical malpractice claim, sent by plaintiff to defendant's prior business address effectively tolled the limitations period, and the Court of Appeals erred by affirming the dismissal of plaintiff's complaint on the statute of limitations. The relevant statute provided that "[t]he notice of intent to file a claim...shall be mailed to the last known professional business address." MCL 600.2919b(2). Additionally, the Legislature has provided for the tolling of the limitations period where a timely notice of intent is given. MCL 600.5856(c) In this case, the plaintiff mailed the notice of intent before the limitation period expired, but defendant received it (forwarded from their prior address) three days after the limitations period expired. Justice Weaver reasoned that even if the notice was not sent to the correct address at the time, it was a minor defect which did not effect any parties' substantial rights. Additionally, she noted that the statute does not require receipt of a notice of intent before the limitations period expired, therefore the date of mailing was the key date and the date of receipt was irrelevant. Justice Markman, joined by Justices Corrigan and Young, dissented, arguing that the statute explicitly required the notice be sent to the last known business address. Here, plaintiff had visited defendant's new location and the events underlying the alleged malpractice took place at the new location. The dissent argued that the Court's ruling created a situation where the period of limitations would be tolled "as long as an improperly addressed notice was mailed before the limitations period expired and the notice is eventually received by a defendant."